**Teamsters, Chauffeurs, Warehousemen & Helpers, Local 631, affiliated with International Brotherhood of Teamsters, AFL–CIO (Vosburg Equipment, Inc. and Bechtel Nevada, Inc.) *and* Connie K. King *and* Keith J. Sinclair *and* Phil Spagnolo.** Cases 28–CB–5102, 28–CB–5113, and 28–CB–5174

September 30, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

On February 8, 2001, Administrative Law Judge Jay R. Pollack issued the attached decision. The General Counsel filed exceptions and a supporting brief. The Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

In adopting the judge's recommendation that the complaint be dismissed, we emphasize that the gravamen of the General Counsel's exceptions as to the Respondent's alleged failure to follow its hiring hall rules is the contention that the Respondent changed its procedure for handling "by name" requests (requests by employers to the Respondent's hiring hall for specific employees) and that this change constituted an unlawful departure from the Respondent's hiring hall rules. However, we agree with the judge's finding that the record fails to show that the Respondent actually changed its practice in this regard. Accordingly, we do not find merit in the General Counsel's contention.[3]

We also emphasize the judge's finding that unions are accorded a wide range of discretion in serving the employees whom they represent. Even if we assumed (as some courts have held) that in the context of an exclusive hiring hall, there is a heightened duty of fair representation, we would still find the Respondent's conduct lawful.[4]

We affirm the judge's dismissal of the allegation that the Respondent failed to comply with its hiring hall rules by improperly maintaining an unwritten rule which required a hiring hall registrant to show that he had a commercial driver's license and the necessary endorsements when filing his experience or interest card. However, in doing so, we do not rely on *Plumbers Local 342 (Contra Costa Electric)*, 329 NLRB 688 (1999), remanded 233 F.3d 611 (D.C. Cir. 2000), supp. decision 336 NLRB 549 (2001), enfd. 325 F.3d 301 (2003). We find *Contra Costa* inapplicable to this allegation, which did not involve negligent conduct.

Finally, in adopting the judge's dismissal of the allegation about the dispatch of Peter Fay, we also rely on *Plumbers Local 91 (Brock & Blevins)*, 336 NLRB 541, 542–543 (2001).

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Dated, Washington, D.C. September 30, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] There are no exceptions to the dismissals of the allegations concerning: the Respondent's refusal to give Keith Sinclair a copy of its hiring hall rules; discrimination against Wayne King, Connie King, and Phil Spagnolo; Bechtel's request for two forklift drivers; Vosburg's request for a dispatcher; and the alleged removal of Wayne King from the referral list.

[3] Although the Respondent's filing to the Board is styled as an answering brief, it includes the argument that the judge erroneously rejected the Respondent's contention that Sec. 10(b) of the Act bars the instant complaint allegations. In light of our disposition of this case, we need not consider whether this argument is properly before us or whether it has merit.

[4] While the Board has applied the "heightened duty" standard in this context, it has done so only in the course of applying the law of the case on remand from the U.S. Court of Appeals for the District of Columbia Circuit. See *Plumbers Local 342 (Contra Costa Electric)*, 336 NLRB 549, 550 (2001), enfd. 325 F.3d 301 (D.C. Cir. 2003). Thus, the Ninth Circuit's recent suggestion that the Board itself has adopted the "heightened duty" standard is incorrect. *Lucas v. NLRB*, 333 F.3d 927, 934 (9th Cir. 2003). We do not adopt that standard here. Because the result here is the same under either standard, Chairman Battista finds it unnecessary to pass on which standard should be applied by the Board in this case.

*Brian P. Kalmaer Esq.,* for the General Counsel.
*Dennis A. Kist, Esq.,* of Las Vegas, Nevada, for the Respondent.

## DECISION

### STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge. I heard this consolidated case in trial at Las Vegas, Nevada, on February 1 and 2, and March 21 and 22, 2000. On March 31, 1999, Connie K. King filed the charge in Case 28–CB–5102 alleging that Teamsters, Chauffeurs, Warehousemen and Helpers Local 631, affiliated with International Brotherhood of Teamsters, AFL–CIO (Respondent or the Union), committed certain violations of Section 8(b)(1)(A) of the National Labor Relations Act (the Act), (29 U.S.C. Sec. 151 et seq.). Keith J. Sinclair filed a charge in Case 28–CB–5113 against the Union on April 26, 1999. Phil Spagnolo filed a charge in Case 28–CB–5174 against Respondent on July 28, 1999. On July 26, 1999, the Regional Director for Region 28 of the National Labor Relations Board issued a complaint and notice of hearing against Respondent, in Case 28–CB–5102, alleging that the Union violated Section 8(b)(1)(A) of the Act by refusing to refer Connie King to employment at Vosburg Equipment.[1] Thereafter on July 30,1999, a consolidated complaint was issued in Cases 28–CB-5113 and 28-CB-5102, further alleging that Respondent violated Section 8(b)(1)(A) of the Act by failing to refer Connie King to employment and by failing to provide Keith Sinclair with a copy of Respondent's hiring hall procedures. On October 29 a consolidated complaint issued in Cases 28–CB–5174, 28–CB–5113, and 28-CB-5102 adding an allegation that Respondent refused to refer Phil Spagnolo to employment, in addition to the previous allegations. The consolidated complaint was amended at the hearing. Respondent filed timely answers to the complaints, denying all wrongdoing.

The parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. On the entire record, from my observation of the demeanor of the witnesses, and having considered the posthearing briefs of the parties, I make the following[2]

## FINDINGS OF FACT AND CONCLUSIONS

### I. JURISDICTION

Respondent admits and I find that at all times material Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

The complaints allege jurisdiction based on the operations of certain employers who utilize the Union's exclusive hiring hall. Respondent and Vosburg Equipment, Inc., have been parties to successive collective-bargaining agreements, the most recent of which is effective by its terms from July 1, 1998, to June 30, 2001; Respondent and Bechtel, Inc. have been parties to collective-bargaining agreements, the most recent of which is effective by its terms from October 1, 1997, to September 30, 2002; and Respondent and GES Exposition Services, Inc., have been parties to successive collective-bargaining agreements, the most recent of which is effective by its terms from June 1, 1997, to May 31, 2001. Respondent is also party to collective-bargaining agreements with the Associated General Contractors (AGC) which is effective by its terms from July 1, 1998, to June 30, 2001, and Nevada Contractors Association & Southern Nevada Home Builders, Inc. (NCA) which is effective by its terms from July 1, 1998, to June 30, 2001.

Vosburg is a Nevada corporation with a principal place of business in Las Vegas, Nevada, where it is engaged in the business of hauling heavy equipment. During the 12 months prior to the issuance of the complaint, Vosburg received in Las Vegas, goods and materials valued in excess of $50,000 from points outside the State of Nevada.

Bechtel is a Nevada corporation with a principal place of business in North Las Vegas, Nevada, where it is engaged as a prime contractor at Nevada test sites for the Government. During the 12 months prior to the issuance of the complaint, Bechtel received in North Las Vegas, goods and materials valued in excess of $50,000 from points outside the State of Nevada. Accordingly, I find that Vosburg and Bechtel meet the Board's jurisdictional standards for asserting jurisdiction over nonretail enterprises.

### II. ISSUES

1. Did Respondent violate Section 8(b)(1)(A) by not complying with its hiring hall rules?
2. Did Respondent violate Section 8(b)(1)(A) by failing and refusing to respond to Keith Sinclair's written request for a copy of Respondent's hiring hall procedures?
3. Did Respondent violate Section 8(b)(1)(A) and (2) by dispatching Van Fleming on January 8, May 1, and November 4, 1999, and Larry Bennett on January 19, 2000?
4. Did Respondent violate Section 8(b)(1)(A) and (2) of the Act by failing to properly refer or dispatch Phil Spagnolo, Van Fleming, Robert Babbit, Steven Johnson, and other employees by dispatching Peter Fay on March 15, Wayne King on April 14, Robert Babbit on July 15, and Connie King on July 15?
5. Did Respondent violate Section 8(b)(1)(A) and (2) of the Act by removing Wayne King's name from the out of work list after King was dispatched but prior to King's acceptance of employment?
6. Did Respondent violate Section 8(b)(1)(A) and (2) of the Act by failing and refusing to refer Connie King to employment at Vosburg Equipment because she associated with individuals who opposed Respondent's officers in an internal union election?
7. Are any of these allegations barred by Section 10(b) of the Act?

[1] The spelling of Vosburg Equipment appears as corrected at the hearing.

[2] The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction to the findings therein, their testimony has been discredited, either as having been in conflict with credited documentary or testimonial evidence or because it was in and of itself incredible and unworthy of belief.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

### 1. The alleged failure to provide a copy of the hiring hall rules

Respondent has collective-bargaining agreements with Vosburg, Bechtel, the AGC, and the NCA. These collective-bargaining agreements provide for an exclusive hiring hall arrangement. The collective-bargaining agreements further require Respondent to post, in its hiring hall, all provisions relating to the functioning of the hiring hall.

General Counsel contends that Respondent did not have any consistent or clearly stated hiring hall rules posted for employees using its hiring hall. Respondent produced an incomplete set of hiring hall rules in April 1999, pursuant to a request by employee Keith Sinclair. However, at the instant hearing, Respondent produced a copy of the hiring hall rules which had actually been posted at the hiring hall since January 1999. The same or similar provisions have been posted by the Union over the years.

On March 22, 1999, Keith Sinclair asked Tim Murphy, secretary treasurer of the Union, for a copy of Respondent's hiring hall rules. Murphy refused to give Sinclair a copy of the rules. However, Sinclair was directed to the posted hiring hall rules in the lobby of the dispatch office. On March 26, 1999, Sinclair sent a written request for the hiring hall rules to the Union. Sinclair received a written response containing four pages of hiring hall rules from the Union's attorney. Sinclair had requested all hiring hall rules but had only received rules pertaining to the construction industry. The documents sent to Sinclair did not contain the rules for maintenance and operations, rock sand and gravel, and the test site. Sinclair admitted that when he orally requested a copy of the rules from Murphy, he was directed to the posted rules in the lobby of the hiring hall but that he did not avail himself of that opportunity.

Respondent contends that there was no charge underlying this complaint allegation. The charge filed by Sinclair alleged that Respondent improperly refused to refer Sinclair from its hiring hall. The General Counsel refused to issue complaint on that allegation but only on Respondent's alleged failure to provide a copy of the hiring hall rules.

A complaint is not restricted to the precise allegations of the charge. As long as there is a timely charge the complaint may allege any matter sufficiently related to or growing out of the charged conduct. *NLRB v. Fant Milling Co.*, 360 U.S. 301, 309 (1959). In *Redd-I, Inc.*, 290 NLRB 1115, 1116 (1988), the Board set forth the test for adding related uncharged allegations to a complaint:

> (1) Whether the untimely allegation involves the same legal theory as the timely charge;
>
> (2) Whether the untimely allegation arises from the same factual circumstances or sequence of events as the timely charge, and
>
> (3) Whether the respondent would raise the same or similar defenses to both allegations.

Applying the *Redd-I* test to this allegation, I find sufficient nexus between Sinclair's charge and the allegation that Respondent refused to furnish him with the hiring hall rules. The allegation arises out of the same sequences of events as the charge, occurred within the same time period and involves a hiring hall violation. See *Well Bred Loaf*, 303 NLRB 1016 fn. 1 (1991); *Office Depot, Inc.*, 330 NLRB 640 (2000); *Ross Stores, Inc.*, 329 NLRB 573 (1999).

I now turn my attention to the merits of the alleged failure to provide a copy of the hiring hall rules to Sinclair. In *Bartenders' & Beverage Dispensers' Union, Local 165*, 261 NLRB 420, 423 (1982), the Board held that unless the records are burdensome or contain truly confidential material, a union is obligated to show its hiring hall lists and records to any referral applicant affected by them. See also *Plumbers Local 375 (H. C. Price Construction)*, 330 NLRB 383 (1999). However, hiring hall rules do not have to be written or posted. *Longshoremen ILA, Local 20, (Ryan-Walsh Stevedoring Co.)*, 323 NLRB 1115, 1128 (1997). The Board merely requires that a union make reasonable good faith efforts to make information available to the people using the hiring hall. *Plumbers, Local 230*, 293 NLRB 315, 316 (1989).

Applying the pertinent law to the instant case, it is undisputed that Sinclair was referred to the posted hiring hall rules. Sinclair did not take the opportunity to read the posted rules. While it is unfortunate that Respondent did not provide Sinclair with a full copy of the rules, a full copy of the rules was posted and Sinclair was notified of that fact. The rules were written and posted pursuant to the applicable collective-bargaining agreements. Under the Board cases, the Union was obligated to make its rules available to Sinclair, but was not required to furnish him with a copy of the rules. The rules posted in the hiring hall lobby appear to satisfy that requirement. Accordingly, I find no violation of the Act in Respondent's failure to furnish Sinclair with a fully copy of Respondent's hiring hall rules.

### 2. The alleged failure to comply with the hiring hall rules

General Counsel contends that Respondent has improperly maintained an unwritten rule which requires a hiring hall registrant to show proof that they have a commercial drivers license (CDL) and the necessary endorsements when a registrant files his experience or interest card.[3] The evidence reveals that Bremen asked registrants to see their license if they were indicating that they had a CDL. The evidence further revealed that the hiring hall rules provide that an applicant "personally fill out a new card in the Dispatch Office" if the employee has updated his CDL or qualifications. Further, the hiring hall rules provide:

> "It is the responsibility of the dispatcher in the first place to obtain necessary information in order to determine the preference, if any, to which the registrant is entitled, based upon information or papers which the workman supplies. If any doubt exists as to the registrant's proper preference, the dispatcher may call prior employers and make other prompt investigation to get the facts needed. Similarly, the dispatcher

[3] Respondent contends that this allegation is not supported by a charge. I find that under the closely related test of *Redd-I*, the hiring hall allegations are sufficiently related to the timely charges alleging an unlawful operation of the hiring hall.

should make an appropriate notation, where necessary, of the license held by the applicant or his related experience to assist in sending workmen meeting the Employer's stated requirement's."

A Union owes its members a duty of fair representation to employees using an exclusive hiring hall. *Breininger v. Sheet Metal Workers Local 6,* 493 U.S. 67 (1989); *Radio-Electronics Officers Union,* 306 NLRB 43, 44 (1992). As part of its duty of fair representation, a union has an obligation to operate its exclusive hiring hall in a manner that is not arbitrary, discriminatory, or in bad faith. The Act prohibits a union from adversely affecting the employment status of someone it represents for discriminatory, arbitrary, or irrelevant reasons. *Miranda Fuel Co.,* 140 NLRB 181, 184–188 (1962). It is also well settled that a union may not deviate from its regular hiring hall procedures in a manner that denies employment opportunities to applicants without inherently encouraging union membership, and thus, violating the Act. *NLRB v. Iron Workers Local 433,* 598 F.2d 154 (9th Cir. 1979); *Electrical Workers Local 592 (United Engineers & Construction),* 223 NLRB 899, 901 (1976).

In *Plumbers Local 342 (Contra Costa Electric),* 329 NLRB 688 (1999), the Board held that mere negligence" does not violate the duty of fair representation even if an applicant losses an employment opportunity as a result of the Union's mistake. If mistakes are routinely made or if mistakes disfavor nonmembers, dissidents, or some other identifiable group, such "mistakes" may be arbitrary, discriminatory or bad faith conduct breaching the duty of fair representation. 329 NLRB 688 at 691. See also *Plumbers Local 375* supra. Further, union actions which deviate from hiring hall rules may be lawful if the action was taken pursuant to a valid union security clause or was necessary to the effective performance of The Union's representative function. *Operating Engineers Local 406 (Ford, Bacon & Davis Construction),* 262 NLRB 50 (1982).

In the instant case the General Counsel has failed to show that Respondent deviated from its hiring hall rules. Further, General Counsel failed to prove that Respondent's hiring hall rules were not reasonable or applied in good faith. "A wide range of reasonableness is allowed the statutory bargaining agent in serving the employees it represents, subject to good faith and honesty of purpose in the exercise of discretion." *Operating Engineers Local 3 (Perini Corp.),* 305 NLRB 1111, 1116 (1992), citing *Ford Motor Co. v. Huffman,* 345 U.S. 330, 337–338 (1953).

3. The referrals issued to Van Fleming

Respondent's policy on by name requests is dependent on the industry. Employers in the convention industry have the right to call "A list" employees by name, without regard to their position on the list. In the construction industry, the collective-bargaining agreements state that an employer may call an employee by name from the "A list" if the "A list" workmen has been on the list for a year or if the "A list" employee has been laid off by the requesting employer within the preceding year. However, in practice, employers have been permitted to request employees by name from the "A list" without these limitations.[4] Employee Van Fleming was dispatched to Granite Construction from the construction "A list" on or about May 5. According to Fleming he had previously spoken to union business agent, Gary Tiffe, and asked why he had not been called to work. Tiffe asked whether Fleming could drive a rock truck and Fleming answered that he could. Tiffe told Fleming that he would put him to work for Granite and that it would be a by name request. According to Fleming, later that afternoon, Fleming received a call from the dispatch office informing him of a dispatch by name to Granite.

Tiffe testified that he was given a list by Dave Breymann, the dispatcher, and told to find a rock truck driver. Breymann told Tiffe to use this list because they needed a rock truck driver with a class A license. Tiffe admitted at trial that a class A license is not needed to drive a rock truck. Tiffe, instead of using Breymann's list, used the master list posted in the hiring hall. The list generated by Breymann was limited to employees who had indicated that they were qualified and interested in driving a rock truck. The list used by Tiffe simply had employees listed by date of application for referral without regard to job classification. When Tiffe got to Van Fleming on the list, Fleming accepted the job. The Respondent's records do not support Fleming's testimony that he was given a by name request. I credit the testimony of Tiffe and Breymann.

Fleming was laid off for 1 week during his employment at Granite Construction. Fleming spoke to Tiffe about the layoff. According to Fleming, Tiffe told him that he would put him back to work. That same day Fleming received a dispatch for Tab Construction. Breymann testified that Fleming was dispatched pursuant to a by name request from Tab. The dispatch slip states "Call by name."

Fleming was later dispatched to Contri Construction on a by name request. According to Fleming, he went to business agent Jerry Shannon and complained that Shannon had caused his layoff at Granite by not properly advising Granite that Fleming was a union steward. Fleming told Shannon that Shannon *had* to put him back to work. According to Fleming, Shannon went to the dispatch office and returned telling Fleming that the employee would be sent to Contri on a by name request. That same day, Breymann called Fleming about the dispatch.

Shannon denied that Fleming was ever a steward at Granite. Shannon denied ever arranging a by name request for Fleming to be dispatched to Contri. According to Shannon he was asked by a Contri supervisor if he knew of any teamster who was good with off-road equipment. Shannon testified that he gave the supervisor three names, one of which was Fleming's. Contri did request Fleming by name and on or about November 9, Breymann dispatched Fleming pursuant to that request. I credit the testimony of Shannon and Breymann.

Section 8(b)(1)(A) of the Act provides that it shall be an unfair labor practice for a labor organization "to restrain or coerce . . . employees in the exercise of the rights guaranteed in Section 7 of the Act." The proviso to Section 8(b)(1)(A) states that

[4] General Counsel contends that Respondent changed the procedure regarding by name requests. However, there is no evidence as to when a change, if any, was made. Accordingly, there is insufficient evidence to support the General Counsel's contention.

the Section "shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." Section 8(b)(2) makes it an unfair labor practice for a union:

> To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

It is well settled that a union cannot discriminate against a hiring hall applicant because of his internal union activities. *Laborers Local 383 (Arizona Building Chapter, AGC)*, 266 NLRB 934, 937 (1983). It is also well settled that a union may not deviate from its regular hiring hall procedures in a manner that denies employment opportunities to applicants without inherently encouraging union membership, and thus, violating the Act. *NLRB v. Iron Workers Local 433*, 598 F.2d 154 (9th Cir. 1979); *Electrical Workers Local 592 (United Engineers & Construction Co.)*, supra

In *Plumbers Local 342* supra, the Board held that mere negligence" does not violate the duty of fair representation even if an applicant losses an employment opportunity as a result of the Union's mistake. If mistakes are routinely made or if mistakes disfavor nonmembers, dissidents, or some other identifiable group, such "mistakes" may be arbitrary, discriminatory or bad faith conduct breaching the duty of fair representation. Supra. See also *Plumbers Local* supra. Further, union actions which deviate from hiring hall rules may be lawful if the action was taken pursuant to a valid union security clause or was necessary to the effective performance of the union's representative function. *Operating Engineers Local 406 (Ford, Bacon & Davis Construction)*, supra.

Applying the above principles to the facts of this case, I find that Tiffe made an innocent mistake in referring Fleming to the job at Granite construction. Tiffe, unknowingly, used the master hiring hall list instead of the computer generated list. However, this was not an intentional violation of the hiring hall rules as alleged. Tiffe, a business agent helping out the dispatcher, simply made a mistake.

General Counsel has failed to establish any violation in the by name request given to Fleming for work at Tab. This referral conforms to the practice for by name requests. There is also insufficient evidence to find a violation in the referral of Fleming by name to Contri. Shannon gave the employer three names and the employer chose Shannon by name.

4. The referral of Larry Bennett

Employee Larry Bennett testified that when he was on the "A list" he solicited work from his employer, Southern Nevada Paving. Southern Nevada Paving then requested Bennett by name and Bennett was dispatched to the company even though there were approximately 20 employees ahead of Bennett on the "A list." Breymann testified that he was unaware that Bennett had solicited the job. According to Breymann, Bennett was properly on the "A list" and was eligible for a by name request.

As stated above, the Board holds that mere negligence" does not violate the duty of fair representation even if an applicant losses an employment opportunity as a result of the Union's mistake. *Plumbers Local 342* supra. Here, the Union had no knowledge that Bennett had solicited the Southern Nevada Pavement job. Bennett was eligible for a by name referral and Respondent granted the referral. Again, there was no wrongdoing on the part of the Union.

5. The dispatch of Peter Fay

General Counsel challenges the dispatch of employee Peter Fay to Bechtel on March 15, 1999. On or about March 4 the Union received an employee requisition form from Bechtel for 2 heavy duty drivers. Respondent was required to fill the request by March 15. Breymann dispatched 2 employees to Bechtel. However, one or both of these drivers did not go to work. On the afternoon of March 15 Breymann received a call from Bechtel asking for a heavy duty driver right away. Breymann dispatched Fay because Fay was present in the hall at the time and was qualified for the position. Fay was dispatched as a heavy-duty driver to Bechtel even though he was number 30 on the construction "A" out of work list. Respondent argued that Fay was on the computer generated list but could not produce such a list. General Counsel further argues that a laid off employee had recall rights and had preference for this job over Fay. However, there was no proof to support the argument.

Based on the testimony of Breymann, I find that the Union acted reasonably in finding an employee to dispatch to Bechtel given the time constraints. As stated above, "a wide range of reasonableness is allowed the statutory bargaining agent in serving the employees it represents, subject to good faith and honesty of purpose in the exercise of discretion." *Operating Engineers Local 3 (Perini Corp.)*, supra, citing *Ford Motor Co. v. Huffman*, 345 U.S. 330, 337–338 (1953).

6. The alleged discrimination against Wayne King, Connie Kind, and Phil Spagnolo

General Counsel contends that Respondent discriminated against Wayne King, Connie King, and Phil Spagnolo because King ran for union office, Wayne King ran for the office of secretary/treasurer of the Union in the fall of 1998. King finished third in that election. Connie King is Wayne King's wife. Spagnolo had some involvement in King's campaign but admitted that he had no knowledge as to whether any agents of the Union ever knew of his involvement.

Pursuant to this theory, General Counsel alleges that Respondent unlawfully dispatched Wayne King to Bechtel on April 15, 1999. When King was dispatched to the Bechtel job he was dispatched from the maintenance and operations "A" list. Phil Spagnolo and Connie King were above Wayne King on this list. On or about April 12, Bechtel sent the Union an employee requisition for a forklift driver. On April 12 Breymann had the computer generate a list of qualified employees. Breymann then began making telephone calls. He called Spagnolo and employee Gary Harrington. According to Breymann he left messages for both employees. The next morning Brey-

mann continued to go down the list and left a message for Connie King. Breymann called two other workers who turned down the job. Breymann then called Wayne King. Respondent's records corroborate Breymann's testimony. Thus, I find that Spagnolo and Connie King were called and left messages before Wayne King was called for the dispatch.

General Counsel speculates that Respondent discriminated in favor of Wayne King so that King would be working and unable to participate in union negotiations in the ready mix industry. There is no evidence that the Union took any action to prevent Wayne King from being on this negotiating team. Rather, Bechtel, the employer, only permitted King to take time off on one occasion.

Connie King testified that she was home on April 12 and did not receive a call from the Union. Spagnolo testified that he did not receive a message from the Union. However, the Union's records indicate that these two employees were called and left messages.

Based on the credible evidence, I find that Respondent lawfully went down the computer-generated list until Wayne King accepted the job. I cannot hold the Union liable for the response or failure to respond to the Union's calls and messages.

7. Bechtel's request for two forklift drivers

On July 14, 1999, Bechtel submitted an employee requisition to the Union requesting two forklift drivers. Breymann printed a list of employees with forklift experience. Breymann went down the list until Connie King and Robert Babbit accepted the jobs. On July 15 Robert Babbit and Connie King received dispatches to Bechtel. Both Babbit and King reported to work on the morning of July 15. The dispatch slips for each shows a reporting time of 8 a.m. However, General Counsel contends that Respondent discriminated against King by telling Babbit to report to Bechtel at 7:30 a.m. By arriving at Bechtel earlier than King, Babbit received preference in seniority over King. King was eventually laid off, and Babbit was not. I find no credible evidence that Respondent intentionally discriminated against Connie King.

Here again, the evidence does not support a finding of a violation. The Union must be permitted reasonable latitude in operating the hiring hall.

8. Vosburg's request for a dispatcher

On March 18 Respondent received a request from Vosburg asking for individuals to be sent for interviews for the position of dispatcher. The request specified that the individuals have "2 years dispatch experience; familiar with trucking industry and heavy equipment; must be computer literate and familiar with common programs." Breymann testified that he entered the qualification codes for "dispatcher" and "computer operator" on the construction list and the dispatch computer generated a small list. Breymann sent Wayne King and Charlene Gifford for interviews. These were the only two employees on the computer-generated list who expressed an interest in the position. On March 23 Vosburg notified Breymann that it had selected Gifford and requested that Gifford be dispatched to the job. General Counsel alleges that Respondent discriminated against Connie King by not dispatching her to this interview.

As stated earlier, Vosburg had requested an employee with at least 2 years of dispatch experience, familiarity with trucking industry and heavy equipment, and familiarity with computers and common programs. Breymann testified that Connie King was not on the list generated by the computer. On March 24, 1999, Connie King asked Breymann why she was not called for the interview at Vosburg. Breymann researched the call and told King that she wasn't called because she hadn't marked computer on her experience card and, therefore, the computer did not include her name on the list. Connie King, however, testified that she had updated her qualifications at the hiring hall in December of 1998. Connie King then filled out a new experience card and gave it to Breymann. Breymann entered the new information into the computer and then printed a copy for Connie King showing that King then had computer and dispatcher listed among her qualifications.

Respondent relies on the following contract provision:

> "The Employer shall first call the dispatching office of the Union for such men as it [sic] they may from time to time need, and the office shall immediately furnish to the employer the required number of qualified and competent workmen of the classifications needed and requested by the Employer, strictly in accordance with the provisions of this Article."

The hiring hall rules further provide, "If you have updated your CDL or qualifications, you must personally fill out a new card in the Dispatch Office."

The evidence shows that Connie King did not have "computer" marked on her experience card until after Wayne King and Gifford had been sent for interviews with Vosburg. The evidence fails to establish any violation by the Union.

9. The alleged removal of Wayne King from the referral list

General Counsel contends that Respondent discriminatorily removed Wayne King from its out-of-work lists on March 23, 1999. The facts reveal no such violation. When seeking employees to be sent to Vosburg for an interview, Breymann generated a computer dispatch. The computer automatically removes an employee from all out-of-work lists. Wayne King reminded Breymann that he should not have been taken off the out-of-work list for an interview. Breymann acknowledged that King was correct and immediately placed King back on the out-of-work lists and issued King a handwritten dispatch for the Vosburg interview. I find that at most Breymann committed an inadvertent error and that Breymann corrected the error as soon as it was brought to his attention.

## CONCLUSIONS OF LAW

1. Vosburg Equipment, Inc., and Bechtel Nevada, Inc., are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent, Teamsters, Chauffeurs, Warehousemen & Helpers, Local 631, affiliated with International Brotherhood of Teamsters, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent did not violate Section 8(b)(1)(A) and 8(b)(2) of the Act, as alleged.

On these findings of fact and conclusions of law and on the entire record, I hereby issue the following recommended[5]

ORDER

The complaint is hereby dismissed.

Dated San Francisco, California. February 8, 2001

[5] All motions inconsistent with this recommended order are hereby denied. In the event no exception are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.